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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

YONNIE JACKSON,

Defendant and Appellant.

C086262

(Super. Ct. Nos. SF118211A  
&  
STK-CR-FE-2011-0006732

Following his conviction on numerous felonies, the trial court ordered Yonnie Jackson to pay \$4,238 in restitution to the California Victim Compensation Board (the Board). On appeal, defendant argues the restitution order should be reversed because (1) there is no rational basis for finding the Board to be a victim; (2) there is no rational basis to support the amount of the restitution order; and (3) the trial court erred in issuing the order without proper notice to defendant or a hearing. The People concede that a

limited remand would be appropriate, “but only to determine the nature of the proceedings that have already occurred.”

We conclude that defendant was not given fair notice of, nor a fair opportunity to dispute, the amount of supplemental restitution requested. Accordingly, we vacate the June 27, 2017 restitution order and remand the matter for a restitution hearing.

### BACKGROUND

In 2012, a jury found defendant guilty of numerous felonies, including kidnapping, stalking, and domestic violence resulting in great bodily injury. (*People v. Jackson* (Jan. 30, 2017, C072540) [nonpub. opn.] (*Jackson*).) The jury could not reach a verdict on the charge of attempted murder. (*Jackson, supra*, C072540.) The court declared a mistrial on the charge of attempted murder and sentenced defendant on the remaining convictions. (*Jackson, supra*, C072540.) The court also ordered defendant to pay \$1,080 in victim restitution to the Board.

In 2013, a second jury found defendant guilty on the attempted murder charge. (*Jackson, supra*, C072540.) The trial court vacated its earlier sentence and resentenced defendant on all counts to an aggregate term of 16 years eight months in state prison. At sentencing, the court ruled defendant was “to pay restitution for any damages as determined by the probation department.” The clerk’s minute order reflected the previously imposed restitution amount of \$1,080, payable to the Board. The abstract of judgment included the following: “RESTITUTION IN THE AMOUNT OF \$1,080.00 PAYABLE TO VICTIM COMPENSATION BOARD, CDCR TO COLLECT.”

Defendant appealed from the judgment resulting from both jury trials; those appeals were consolidated. Defendant did not appeal the initial restitution order. This court affirmed the judgment in January 2017.

On June 27, 2017, the probation department (the Department) filed a supplemental report requesting an additional \$4,238 in victim restitution be paid by defendant. The request identified three claims, their individual reference numbers, and the amount of

money requested in each claim. That same day, the court issued an order compelling defendant to pay \$4,238 in victim restitution to the Board (the June 27 restitution order); that order was filed the following day.

On November 20, 2017, defendant filed an ex parte motion to rescind the June 27 restitution order. Defendant said he already paid the first \$1,080 restitution order. He argued the imposition of additional restitution without a hearing violated his right to due process. The court denied his motion. Defendant appeals from that order.

In April 2018, a deputy appellate clerk from the trial court filed in this court a declaration stating that she was “unable to locate” any documents in the record indicating defendant was given “advance[] notice” of the right to request a hearing on restitution.

#### DISCUSSION

Defendant contends the June 27 restitution order must be vacated because he was not given advance notice of the amount of restitution claimed, nor was he given the opportunity to challenge the amount claimed.<sup>1</sup> We agree.

“Restitution in criminal proceedings is mandated by article I, section 28, subdivision (b) of the California Constitution, and that mandate has been carried out by our Legislature in [Penal Code] section 1202.4, which provides in part: ‘(f) [I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.’ ” (See *People v. Riddles* (2017) 9 Cal.App.5th 1248, 1251; *People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) A defendant “has the right to a hearing before a judge to dispute the determination of the amount of restitution.” (Pen. Code, § 1202.4, subd. (f)(1).) The right to a hearing “is a

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<sup>1</sup> Because we vacate the June 27 order on the ground defendant was not given notice or an opportunity to be heard, we need not address defendant’s remaining contentions.

crucial part of the overall statutory scheme, necessary to satisfy due process, and ensure fundamental fairness in the determination of the restitution ultimately ordered.” (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391.)

“The scope of a criminal’s due process rights at a hearing to determine the amount of restitution is very limited: ‘ “A defendant’s due process rights are protected when the probation report gives notice of the amount of restitution claimed . . . , and the defendant has an opportunity to challenge the figures in the probation report at the sentencing hearing.” ’ [Citations.]” (*People v. Cain* (2000) 82 Cal.App.4th 81, 86.) Prior notice of the nature and amount of restitution sought is critical because the defendant bears the burden of proof at the hearing to contest the items of loss and amounts claimed by the victim. (See *People v. Collins* (2003) 111 Cal.App.4th 726, 734.)

Defendant is not challenging the original restitution order; he challenges only the June 27 order. There is no motion in the record requesting the new restitution, only a supplemental report requesting the additional amounts. That request was filed the same day the court issued the restitution order, which was filed the following day. There also is a declaration from a deputy appellate clerk at the superior court indicating there is no record of defendant being given advance notice of the People’s intent to seek additional restitution.

The record thus clearly indicates defendant was not provided with adequate notice of the claimed losses. As such, defendant was denied a meaningful opportunity to review and challenge the restitution ordered on June 27, 2017. Under these circumstances, the June 27, 2017 restitution order must be vacated, and the matter remanded to the trial court for a new restitution hearing in accordance with Penal Code section 1202.4, subdivision (f)(1). (*People v. Resendez* (1993) 12 Cal.App.4th 98, 115 [vacating restitution order imposed in violation of due process].)

## DISPOSITION

The June 27, 2017 restitution order is reversed and the case is remanded for a hearing on the amount of restitution to be ordered. In all other respects, the judgment is affirmed.

\_\_\_\_\_KRAUSE\_\_\_\_\_, J.

We concur:

\_\_\_\_\_MAURO\_\_\_\_\_, Acting P. J.

\_\_\_\_\_HOCH\_\_\_\_\_, J.